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## TRANSMITTAL FORM

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|--|---|------------------------|-----------------------|
|  |   | Application Number     | 09/966976-Conf. #7248 |
|  |   | Filing Date            | September 27, 2001    |
|  |   | First Named Inventor   | David A. Ferrick      |
|  |   | Art Unit               | 1646                  |
|  |   | Examiner Name          | Joseph Murphy         |
| Total Number of Pages in This Submission | 1 | Attorney Docket Number | RGV-002CN             |

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### ENCLOSURES (Check all that apply)

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| <input checked="" type="checkbox"/> Amendment/Reply                          | <input type="checkbox"/> Petition   | <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final   | <input type="checkbox"/> Petition to Convert to a Provisional Application               | <input type="checkbox"/> Proprietary Information   |
| <input type="checkbox"/> Affidavits/declaration(s)                           | <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address | <input type="checkbox"/> Status Letter   |
| <input type="checkbox"/> Extension of Time Request                           | <input type="checkbox"/> Terminal Disclaimer  | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):            |
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| <input type="checkbox"/> Response to Missing Parts/ Incomplete Application   |   |  |
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| Remarks  |   |  |

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

|                         |   |
|-------------------------|---|
| Firm or Individual name | LAHIVE & COCKFIELD, LLP<br>Megan E. Williams - 43,270 |
| Signature               |   |
| Date                    | October 27, 2003                                      |

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Dated: October 27, 2003

Signature: (Megan E. Williams)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of: David A. Ferrick, et al.

Serial No.: 09/966,976

Filed: September 27, 2001

For: METHODS AND COMPOSITIONS FOR SCREENING FOR  
MODULATORS OF IgE SYNTHESIS, SECRETION AND  
SWITCH REARRANGEMENT

Attorney Docket No.: RGV-002CN (formerly A-66038-4RMS/JJD/DLR)

Group Art Unit: 1646

Examiner: Murphy, Joseph

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CERTIFICATION UNDER 37 CFR 1.10

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October 27, 2003  
Date of Signature and of Mail Deposit

By:

Megan E. Williams, Esq.  
Registration No. 43,270  
Attorney for Applicants

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

This paper is in response to the Restriction Requirement dated September 26, 2003.

**Election/Restriction:**

In the Restriction Requirement, the Examiner has required election of one of the following species: a constitutive promoter; an inducible promoter; or an IL-4 inducible epsilon promoter. In particular, the Examiner is of the opinion that “[t]hese species are distinct because each promoter has a separate structure, and functions in a different manner (i.e. constitutive vs. inducible). Furthermore, a search of art for one of these promoters would not reveal art on the others.”

Applicants respectfully traverse the restriction requirement on the grounds that “inducible promoter[s]” and the “IL-4 inducible promoter” are not separate species. Rather, the IL-4 inducible epsilon promoter is a species of inducible promoter. Accordingly, a search of the art for inducible promoters would reveal art relating to an IL-4 inducible promoter. However, in order to be considered responsive to the instant Office Action, Applicants’ hereby elect an IL-4 inducible epsilon promoter *for search purposes only*.

It is Applicants’ understanding that under 35 U.S.C. §121, an election of a single species for prosecution on the merits is required, to which the claims will be restricted if no generic claim is finally held allowable. Applicants respectfully submit that claim 29 is generic. Applicants further understand that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent from or otherwise include all the limitations of an allowed generic claims as provided by 37 C.F.R. §1.41 *et seq.*

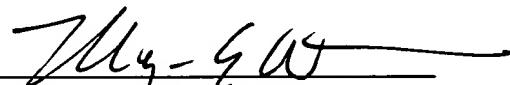
## CONCLUSION

If a telephone conversation with Applicants' Attorney would expedite prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617) 227-7400.

Respectfully submitted,

LAHIVE & COCKFIELD, LLP

By:

  
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Dated: October 27, 2003